



west virginia department of environmental protection

Division of Water and Waste Management
601 57th Street, SE
Charleston, WV 25304-2345
Phone: (304) 926-0495
Fax: (304) 926-0497

Joe Manchin III, Governor
Stephanie R. Timmermeyer, Cabinet Secretary
www.wvdep.org

**AMENDED ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

TO: Jacks Branch Coal Company
P. O. Box 2066
Charleston, West Virginia 25327

DATE: April 5, 2007

ORDER No.: 18

RE: WV/NPDES Permit No. WV0093912

This Amended Order is issued pursuant to the authority vested in the Director of the Division of Water and Waste Management (hereinafter "DWWM") of the Department of Environmental Protection (hereinafter "DEP") under Chapter 22, Article 11, Section 1, et. seq., including but not limited to, Chapter 22, Article 11, Section 6, of the Code of West Virginia to Jacks Branch Coal Company. It amends and institutes revisions to Order No. 18 issued on December 9, 2004.

FINDINGS OF FACT

In support of this Amended Order, the Director hereby finds the following:

1. Permittee owns and operates a treatment system, which discharges pollutants into the Waters of the State.
2. Permittee was issued WVNPDES Water Pollution Control Permit No. WV0093912, on January 22, 2007, for the operation and maintenance of its facilities, and for the discharge of pollutants from these facilities.

Amended Order
Page 2

3. WVNPDES Permit No. WV0093912 prescribes certain effluent limitations and monitoring requirements for selenium.
4. The permittee cannot achieve compliance with the final effluent limitations for selenium. A schedule of compliance is contained herein to implement a phased abatement plan to upgrade the treatment facilities
5. The Environmental Protection Agency (hereinafter "EPA") has concluded that a fish-tissue approach is better than a conventional water concentration approach to protect aquatic life from chronic adverse effects of selenium. EPA has noticed Draft Aquatic Life Criteria for Selenium in the Federal Register dated December 17, 2004, and is seeking scientific information, data and views.
6. DEP has undertaken a study to determine selenium bioaccumulation rates in select Waters of the State. DEP intends to use the results of this study to review the selenium criteria with the most current state of science on selenium toxicity.

In consideration of the above, this Amended Order modifies the final effluent limitations and interim self-monitoring requirements, and requires compliance with the schedule contained herein.

ORDER OF COMPLIANCE

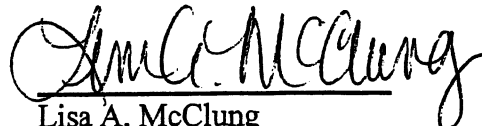
And now this 5th day of April, 2007, the permittee is hereby ORDERED to comply with the following:

1. Your permit is hereby modified to extend the compliance deadline for your final selenium effluent limitations for three (3) years from the effective date of this Order for the outlets in Attachment A.
2. Comply with the interim self-monitoring and reporting requirements specified in Attachment A until compliance with the Schedule established in Attachment B is attained. The interim selenium self-monitoring requirements are subject to all requirements and conditions of a WVNPDES Water Pollution control Permit.
3. The final selenium effluent limitations and monitoring requirements shall be attained in accordance with the schedule established in Attachment B.
4. Permittee will submit a Status Report to the inspector every six (6) months from the effective date of this Amended Order. The Status Report shall indicate the progress toward completion of the interim requirements and indicate a projected completion date.

Amended Order
Page 3

Compliance with the terms and conditions of this Amended Order shall not be construed to relieve the permittee of the obligation to comply with the terms and conditions of its WVNPDES Permit or of any applicable State or Federal law. Violation of this Amended Order is a violation of the West Virginia Code Chapter 22, Article 11, and may result in enforcement actions as outlined in the Act.

This Amended Order shall be effective upon receipt.



Lisa A. McClung
Director

Attachments

cc: Regional Office
Inspector
Headquarters

Permit No. WV0093912

Page 2 of 46

- Permit No. WV0093912
- Page 2 of 46

PLAINTIFFS' EXHIBIT 11

- PLAINTIFFS' EXHIBIT 11**

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- PLAINTIFFS' EXHIBIT 11**

PLAINTIFFS

Permit No. WV0093912
Page 5 of 46

- Permit No. WV0093912
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- Page 5 of 46

Permit No. WV0093912
Page 5 of 46

- 480

PLAINTIFFS' EXHIBIT 11

- 481

PLAINTIFFS' EXHIBIT 11

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[illegible]

A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

1. The permittee is authorized to discharge from Outlet Number(s) listed below:
2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/Conc	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
012	L	38°12'42" 81°17'54"	910	Flow	12/09/2004		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	12/09/2004		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	12/09/2004		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	12/09/2004		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	12/09/2004	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Manganese, Total	12/09/2004		Conc	Report Only	1.42	2.46	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	12/09/2004		Conc	Report Only	1.00	1.73	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				(See 3, 4)	12/09/2004		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab

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								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
014	L	38°13'37" 81°18'40"	900	Flow	01/22/2007		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	01/22/2007		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	01/22/2007		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	01/22/2007		Conc	N/A	N/A	0.50	ML/L *	See Section A of Permit	Grab
				Selenium, Total Recoverable	01/22/2007	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
					12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	01/22/2007		Conc	Report Only	1.42	2.46	MG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	1.00	1.73	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As Al)	01/22/2007		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
				(See 3, 4)									

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2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY.** Outlets should be limited and monitored by the permittee as specified below:

[illegible]

PLAINTIFFS' EXHIBIT 11

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PLAINTIFFS' EXHIBIT 11

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[illegible]

- PLAINTIFFS' EXHIBIT 11**

490

PLAINTIFFS' EXHIBIT 11

- 491

[illegible]

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

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[illegible]

PLAINTIFFS' EXHIBIT 11

- 493

PLAINTIFFS' EXHIBIT 11

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494

A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

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Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	DISCHARGE LIMITATIONS				MONITORING REQUIREMENTS		
							Quan/Conc	Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
023	L	38°13'28" 81°19'32"	1075	Flow	01/22/2007		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	01/22/2007		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	01/22/2007		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	01/22/2007		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	01/22/2007	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	01/22/2007		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	3.00	6.00	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	1.00	1.73	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (as Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				(See 3, 4)									

PLAINTIFFS' EXHIBIT 11

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- 496

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- 497

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								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
027	L	38°12'51" 81°17'47"	1160	Flow	12/09/2004		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	12/09/2004		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	12/09/2004		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	12/09/2004		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	12/09/2004	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
					12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	01/22/2007		Conc	Report Only	1.82	3.15	MG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	1.06	1.84	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As Al)	12/09/2004		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
				(See 3, 4)									

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PLAINTIFFS' EXHIBIT 11

- PLAINTIFFS' EXHIBIT 11**

501

A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

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Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quant/Conc	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
030	L	38°14'08" 81°18'16"	1110	Flow	01/22/2007		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	01/22/2007		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	01/22/2007		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	01/22/2007		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	01/22/2007	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	01/22/2007		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	1.80	3.11	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	01/22/2007		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
				(See 3, 4)									

PLAINTIFFS' EXHIBIT 11

- PLAINTIFFS' EXHIBIT 11**

503

Permit No. WV0093912
Page 30 of 46

- Permit No. WV0093912
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- Page 30 of 46

Permit No. WV0093912
Page 30 of 46

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

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								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
034	L	38°13'43" 81°18'59"	1120	Flow	01/22/2007		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	01/22/2007		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	01/22/2007		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	01/22/2007		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	01/22/2007	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	3.00	6.00	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	1.80	3.11	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
					01/22/2007		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
		(See 3, 4)											
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				506									

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[illegible]

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								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
040	L	38°14'08" 81°17'33"	1285	Flow	01/22/2007		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	01/22/2007		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	01/22/2007		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	01/22/2007		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	01/22/2007	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	3.00	6.00	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	1.80	3.11	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
					01/22/2007		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
				PLAINTIFFS' EXHIBIT 11									
				512									

A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS

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								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
048	L	38°12'48" 81°17'44"	850	Flow	12/09/2004		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	12/09/2004		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	12/09/2004		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	12/09/2004		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	12/09/2004	12/09/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
					12/10/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	01/22/2007		Conc	Report Only	1.82	3.15	MG/L	Semi-monthly	Grab
				Manganese, Total	01/22/2007		Conc	Report Only	1.06	1.84	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	01/22/2007		Conc	Report Only	0.43	0.75	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	12/09/2004		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
		(See 3, 4)											

<u>Interim Requirement</u>		<u>Compliance Date</u>
1. Schedule a meeting with your regional permit supervisor and inspector to discuss the applicability of the special material-handling plan and conceptual plan(s) for the treatment of selenium, including any pilot scale treatment system.		On or before four (4) months from the effective date of this Amended Order.
2. Submit a Status Report to the inspector.		Every six (6) months from the effective date of this Amended Order.
3. <u>Surface mines only.</u> Submit a special material-handling plan for selenium if one (1) or more years of coal extraction remain. The plan shall be submitted to the regional office for approval and shall detail the measures and steps to isolate the selenium producing material. The plan shall be considered a revision to the Surface Mining Permit and be implemented upon approval.		On or before six (6) months of the effective date of this Amended Order.
4. Submit a treatment plan detailing designs and appurtenances to prevent the discharge of selenium in concentrations greater than the final selenium effluent limitations. The plan shall be submitted to the regional office for approval. The plan shall be considered a revision to the Surface Mining Permit and modification to the NPDES Permit.		On or before twelve (12) months of the effective date of this Amended Order.
5. Commence construction and/or installation of the treatment facilities and/or pilot scale treatment system.		On or before eighteen (18) months of the effective date of this Amended Order
6. Complete installation or construction of the treatment facilities, and achieve compliance with the final selenium effluent limitations.		On or before thirty-six (36) months of the effective date of this Amended Order.

West Virginia Environmental Quality Board
601 57th Street, SE
Charleston, West Virginia 25304

Notice is hereby given of your right to appeal the terms and conditions of this agency action as provided under West Virginia Code § 22-11-21. Pursuant to the provisions of § 22B-1-7(c), a person subject to this action (permittee) may file an appeal to the Environmental Quality Board (EQB) within 30 days of being served notice of such agency action. For other parties (citizens) adversely affected or aggrieved by this action, an appeal may be filed to the EQB within 30 days after the date upon which service was complete to the subject person "(permittee)". Such Notice of Appeal shall be sent to the EQB on the form prescribed by the Board.

RIGHT TO APPEAL

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ 2.07
 Certified Fee 2.40
 Return Receipt Fee (Endorsement Required) 1.85
 Restricted Delivery Fee

Postmark Here

6-32

Jacks Branch Coal Company
 P. O. Box 2066
 Charleston, WV 25327

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Jacks Branch Coal Company P. O. Box 2066 Charleston, WV 25327</p>	<p>APR 17 2007 APR 13 2007</p> <p>Mail <input type="checkbox"/> Express Mail d <input type="checkbox"/> Return Receipt for Merchandise Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7004 2890 0001 7821 3121</p>	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540